



# Associated Subcontractors of Massachusetts, Inc.

One Washington Mall, 5th Floor, Boston, MA 02108

TEL: 617-742-3412 • FAX: 617-742-2331

E-Mail: mail@associatedsubs.com • Web: www.associatedsubs.com

June 23, 2009

His Excellency Deval Patrick  
Governor  
Commonwealth of Massachusetts  
State House, Room 360  
Boston, MA 02133

RE: VETO of Outside Section #105 of the Conference Budget granting an exemption from the public bidding laws for the University of Massachusetts, avoiding oversight, transparency and accountability

Dear Governor Patrick:

I write to you today on behalf of the thousands of small business subcontractors who perform most of the work on construction projects in the commonwealth, both public and private. These companies welcome capital construction at the University of Massachusetts, but are alarmed by repeated efforts of the University to seek blanket exemptions from all existing procurement laws in the construction of its new facilities.

Outside Section 105 of the Conference Budget is the latest of many such exemption requests and allows the UMass Building Authority to use an "alternative mode of procurement" in the design and construction of a new bio-processing facility at the UMass Dartmouth campus. In essence, it allows UMass to make its own rules for procurement of the project, with no oversight or accountability. This goes against long-standing public policy to promote fairness and transparency in public bidding, and assure that taxpayers get the best quality construction at the lowest possible price.

- In effect, the provision eliminates competitive bidding by subcontractors, and fair opportunity for qualified small businesses who desperately need work in this economy. The only companies able to bid would be those selected by the general contractor. In other words, getting the job will depend on having connections – which is not only favoritism at its worst, but a situation ripe for fraud.
- Eliminating fair and open competition in this way serves only to drive up the costs of the project.
- Allowing the general contractor to control selection of subcontractors means there is no objective prequalification, and less assurance of good performance and quality results.
- In short, the exemption removes all of our existing protections against waste, fraud and abuse, and allows the university to proceed as it wants, with no oversight and no accountability.

Such sweeping exemption makes no sense – particularly, since the public construction laws of the Commonwealth already provide an alternative method of procurement to all public agencies, in the form of "CM at Risk" (c.149A), which was a centerpiece of the landmark 2004 Construction Reform Law. CM at Risk is modeled on private sector practice, yet preserves many of the safeguards of our public bidding laws. CM at Risk is designed for large, complex projects, and is now the preferred construction method used by DCAM and other awarding authorities. It would be ideal for this project.

As many will remember, it was scandal in the design and construction of UMass projects that led to the formation of the Ward Commission three decades ago, and the implementation of reforms to protect the public interest. With millions – even billions – of public dollars at stake today, it makes no sense to reverse course and weaken the oversight of university projects by allowing "alternative procurement."

To fully protect the interests of the commonwealth and the taxpayers, we urge you to VETO Outside Section 105 of the Conference Budget. Thank you for your consideration.

Sincerely,

Monica Lawton, CEO